

# **EXHIBIT C**

**ELECTRONICALLY FILED**

Superior Court of California,

County of San Diego

**12/23/2015** at 08:00:00 AM

Clerk of the Superior Court

By Pamela Townsend, Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

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COUNTY OF SAN DIEGO

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11 KIGEN SAHAKIAN, individually and on  
 behalf of all others similarly situated,

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Plaintiff,

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vs.

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15 CONSUMER CREDIT COUNSELING  
 SERVICE OF GREATER ATLANTA, INC.,  
 a Georgia corporation, d/b/a ClearPoint Credit  
 16 Counseling Solutions, and DOES 1-50,  
 inclusive,

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Defendants.

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CASE NO. 37-2015-00042715-CU-MC-CTL

**CLASS ACTION COMPLAINT FOR  
VIOLATION OF:**

**1) CALIFORNIA PENAL CODE § 632.7  
("PRIVACY ACT")**

**2) TELEPHONE CONSUMER  
PROTECTION ACT, 47 U.S.C. § 227  
("TCPA")**

1 GENERAL ALLEGATIONS

2 1. Plaintiff Kigen Sahakian (“Plaintiff”) is an individual residing in Fresno County,  
3 California.

4 2. Plaintiff is informed and believes and thereon alleges that defendant Consumer  
5 Credit Counseling Service of Greater Atlanta, Inc. (referred to herein as “ClearPoint”) is a Georgia  
6 corporation that does business in San Diego County and elsewhere under the fictitious business  
7 name ClearPoint Credit Counseling Solutions.

8 3. Plaintiff does not know the names of the defendants sued as DOES 1 through 50  
9 but will amend this complaint when that information becomes known. Plaintiff alleges on  
10 information and belief that each of the DOE defendants is affiliated with the named defendant in  
11 some respect and is in some manner responsible for the wrongdoing alleged herein, either as a  
12 direct participant, or as the principal, agent, successor, alter ego, or co-conspirator of the named  
13 defendant. For ease of reference, plaintiff will refer to the named defendant and the DOE  
14 defendants collectively as “defendants.”

15 4. Venue is proper in this judicial district because ClearPoint has not designated a  
16 principal office in California. Furthermore, at least some of the events giving rise to the class  
17 claims occurred in this judicial district.

18 5. This Court has subject matter jurisdiction of plaintiff’s TCPA claim pursuant to 47  
19 U.S.C. § 227(b)(3).

20 PRIVACY ACT — GENERAL ALLEGATIONS

21 6. During the applicable statute of limitations, and while plaintiff resided in and was  
22 physically present in the State of California, and while plaintiff was using a cellular telephone,  
23 plaintiff participated in one or more telephone communications with defendants’ representatives.  
24 Plaintiff alleges on information and belief that defendants secretly recorded these communications.  
25 Defendants did not notify plaintiff that they were recording the communications, nor did  
26 defendants obtain plaintiff’s consent.

27 7. Plaintiff alleges on information and belief that, during the twelve months preceding  
28 the filing of this complaint, defendants routinely recorded outbound telephone communications

1 with customers who resided in and were physically present in the State of California without  
2 notifying the other party that the communications were being recorded.

3 8. California Penal Code § 632.7 prohibits the recording of any communication  
4 without the consent of all parties where one of the parties to the communication is using a cellular  
5 telephone. Defendants' practice of surreptitiously recording outbound telephone communications  
6 violates Cal. Penal Code § 632.7.

7 TCPA — GENERAL ALLEGATIONS

8 9. During the relevant limitations period, defendants placed one or more non-  
9 emergency telephone calls to plaintiff's cellular telephone. Plaintiff alleges on information and  
10 belief that the calls to plaintiff's cellular telephone were initiated by defendants using an automatic  
11 telephone dialing system.

12 10. Defendants did not obtain plaintiff's prior express consent before initiating the calls  
13 to plaintiff's cellular telephone.

14 CLASS ACTION ALLEGATIONS

15 11. Plaintiff brings this lawsuit as a class action under Code of Civil Procedure section  
16 382. Plaintiff seeks to represent two classes: the "Privacy Act Class" and the "TCPA Class."

17 12. The Privacy Act Class is defined as follows: "All natural persons who, while  
18 residing in and physically present in the State of California, and during the applicable statute of  
19 limitations: (1) participated in at least one telephone communication while using a cellular  
20 telephone with a live representative of defendants that was recorded by defendants without  
21 notification and (2) are identifiable through records held by defendants and/or third parties.  
22 Excluded from the class are all employees of defendants, all attorneys and employees of plaintiff's  
23 counsel, and the judicial officers to whom this matter is assigned."

24 13. The TCPA Class is defined as follows: "All natural persons nationwide who,  
25 during the applicable statute of limitations, received a telephone call from defendants that: (1) was  
26 made to their cellular telephone; (2) was initiated using an automatic telephone dialing system  
27 and/or an artificial or prerecorded voice; and (3) was initiated at a time when the called party had  
28 not given defendants prior express consent for such calls. Excluded from the class are all

1 employees of defendants, all attorneys and employees of plaintiff's counsel, and the judicial  
2 officers to whom this matter is assigned.”

3 14. Ascertainability. The members of the Privacy Act Class and the TCPA Class may  
4 be ascertained by reviewing records in the possession of defendants and/or third parties, including  
5 without limitation defendants' call records, customer records, call lists, and telephone recordings.

6 15. Common Questions of Fact or Law. There are questions of fact or law that are  
7 common to the Privacy Act Class and the TCPA Class, which predominate over individual issues.  
8 The common questions regarding the Privacy Act Class include, without limitation:  
9 (1) defendants' policies and procedures for recording telephone communications with customers  
10 in California; (2) whether defendants notify customers on outbound calls that their telephone  
11 communications are recorded; (3) whether defendants' conduct constitutes a violation of Cal.  
12 Penal Code § 632.7; (4) defendants' record-keeping practices; and (5) the appropriate remedies for  
13 defendants' conduct. The common questions regarding the TCPA Class include, without  
14 limitation: (1) defendants' policies and procedures for obtaining the called party's prior express  
15 consent to place calls to cellular telephones; (2) whether defendants place calls to cellular  
16 telephones using an automatic telephone dialing system or an artificial or prerecorded voice;  
17 (3) defendants' record-keeping practices; and (4) the appropriate remedies for defendants'  
18 conduct.

19 16. Numerosity. The Privacy Act Class and the TCPA Class are so numerous that  
20 joinder of all Privacy Act or all TCPA Class members would be impracticable. Plaintiff is  
21 informed and believes and thereon alleges that each class consists of at least 50 members.

22 17. Typicality and Adequacy. Plaintiff's claims are typical of the claims of the  
23 members of both classes. Plaintiff alleges on information and belief that other Privacy Act Class  
24 members also participated in one or more telephone communications with defendants that were  
25 secretly recorded. Plaintiff has no interests that are adverse to those of the other Privacy Act Class  
26 members. Plaintiff will fairly and adequately protect the interests of the Privacy Act Class  
27 members. Plaintiff alleges on information and belief that other TCPA Class members also  
28 received one or more non-emergency telephone calls to their cellular telephone from an automatic

1 telephone dialing system and/or an artificial or prerecorded voice operated by defendants without  
2 first providing prior express consent to receive such calls. Plaintiff has no interests that are  
3 adverse to those of the other TCPA Class members. Plaintiff will fairly and adequately protect the  
4 interests of the TCPA Class members.

5 18. Superiority. A class action is superior to other methods for resolving this  
6 controversy. Because the damages suffered by each Privacy Act Class member and each TCPA  
7 Class member are low, the expense and burden of individual litigation would make it  
8 impracticable for members of each class to redress the wrongs done to them. Furthermore, on  
9 information and belief, Privacy Act Class members do not know that their rights have been  
10 violated. Class certification would also conserve judicial resources and avoid the possibility of  
11 inconsistent judgments.

12 FIRST CAUSE OF ACTION

13 (Violation of Cal. Penal Code § 632.7)

14 19. Plaintiff incorporates by reference paragraphs 1-8 and 11-18 as if set forth herein.

15 20. Plaintiff alleges on information and belief that, within the applicable statute of  
16 limitations, plaintiff and the Privacy Act Class members, while residing in and physically present  
17 in the State of California, and while using a cellular telephone, participated in telephone  
18 communications with a live representative of defendants, which communications were recorded by  
19 defendants without the consent of plaintiff and the Privacy Act Class members. Defendants did  
20 not notify plaintiff and the Privacy Act Class members that the communications were being  
21 recorded.

22 21. Cal. Penal Code § 632.7 prohibits the intentional recording of a communication  
23 without the consent of all parties where at least one of the parties to the communication is using a  
24 cellular telephone. Defendants violated § 632.7 by intentionally recording the communications  
25 with plaintiff and other Privacy Act Class members without obtaining their consent.

26 22. As a result of defendants' conduct, plaintiff and the Privacy Act Class members  
27 have been injured. Accordingly, plaintiff and the Privacy Act Class members are entitled to  
28 statutory damages of \$5,000 per recorded communication pursuant to Cal. Penal Code § 637.2(a),

1 and injunctive relief to halt the secret recording of communications pursuant to Cal. Penal Code  
2 § 637.2(b).

3 SECOND CAUSE OF ACTION

4 (Violation of the Telephone Consumer Protect Act, 47 U.S.C. § 227)

5 23. Plaintiff incorporates by reference paragraphs 1-5 and 9-18 as if set forth herein.

6 24. Plaintiff is informed and believes and thereon alleges that, without first obtaining  
7 the prior express consent of plaintiff or the TCPA Class members, defendants initiated non-  
8 emergency calls to plaintiff's and TCPA Class members' cellular telephones by means of an  
9 automatic telephone dialing system and/or an artificial or prerecorded voice, in violation of 47  
10 U.S.C. § 227(b).

11 25. Plaintiff is informed and believes and thereon alleges that the calls to plaintiff's and  
12 TCPA Class members' cellular telephones were made by defendants knowingly and willfully.

13 26. As a result of defendants' conduct, pursuant to 47 U.S.C. § 227(b)(3), plaintiff and  
14 the TCPA Class members are entitled to injunctive relief and statutory damages of at least \$500  
15 per violation and up to \$1,500 per violation.

16 PRAYER

17 WHEREFORE, plaintiff prays for judgment against defendants as follows:

- 18 1. For statutory damages as alleged herein;
- 19 2. For injunctive relief as alleged herein;
- 20 3. For costs of suit;
- 21 4. For pre-judgment interest; and
- 22 5. For such other relief that the Court deems proper.

23 Dated: December 22, 2015

DOSTART HANNINK & COVENEY LLP

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 26 ZACH P. DOSTART  
 Attorneys for Plaintiff

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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial by jury on all claims so triable.

Dated: December 22, 2015

DOSTART HANNINK & COVENEY LLP

  
ZACH P. DOSTART  
Attorneys for Plaintiff

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